

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SYLVESTER JAMES MAHONE,  
  
Plaintiff,  
  
v.  
  
DOUG WADDINGTON, *et al.*,  
  
Defendants.

Case No. C04-5463RJB

ORDER DENYING MOTION FOR  
RECONSIDERATION

This matter comes before the Court on Plaintiff's Motion for Reconsideration. Dkt. 114. The Court has considered the relevant records, and the remainder of the file herein.

**I. FACTS AND PROCEDURAL HISTORY**

On July 13, 2005, United States Magistrate Judge J. Kelley Arnold issued a Report and Recommendation addressing 1) whether Plaintiff's claims regarding the handling of his legal mail should be summarily dismissed, 2) whether Plaintiff's claims regarding medical treatment (a specific medical emergency as a result of a pepper spray incident and other medical care) should be summarily dismissed, and 3) whether Plaintiff's claims regarding the conditions of his confinement should be summarily dismissed. Dkt. 103. The specific facts in this case are recounted at length in the Report and Recommendation and shall not be repeated here.

On August 25, 2005, all Plaintiff's claims in this matter, except claims dealing with a pepper spray incident, were dismissed when the Report and Recommendation was adopted. Dkt. 112. All Defendants were dismissed except Defendant Thaut, who was involved in the pepper spray incident. *Id.*

1 Plaintiff now moves the Court to reconsider the following portions of it's August 25, 2005  
2 order adopting Judge J. Kelley Arnold's Report and Recommendation (Dkt. 112): 1) dismissal of  
3 Plaintiff's conditions of confinement claims, 2) dismissal of Plaintiff's medical care claims, and 3)  
4 dismissal of all defendants except Defendant Thaut in regard to a pepper spray incident. Dkt. 114.

5 **II. DISCUSSION**

6 **A. STANDARD ON MOTION FOR RECONSIDERATION**

7 Federal Local Rule CR 7(h) provides in relevant part as follows:

8 Motions for reconsideration are disfavored. The court will ordinarily deny such motions in  
9 the absence of a showing of manifest error in the prior ruling or a showing of new facts or  
10 legal authority which could not have been brought to its attention earlier with reasonable  
11 diligence.

12 **B. CONDITIONS OF CONFINEMENT AND MEDICAL CARE**

13 Plaintiff has failed to show a manifest error in the prior ruling or new facts or legal authority  
14 which could not have been brought to the Court's attention earlier with reasonable diligence under  
15 Federal Local Rule 7(h) for either his conditions of confinement claim or medical care claims which  
16 were dismissed. Plaintiff's Motion for Reconsideration regarding his conditions of confinement and  
17 medical care claims should be denied.

18 **C. SUPERVISOR LIABILITY**

19 All Defendants, except Defendant Thaut, were dismissed from this case. Dkt. 112. Plaintiff  
20 argues in his Motion for Reconsideration that the Court failed to address his claim against  
21 "Defendants Waddington, Frakes, May, Obenland and Russell for their breach in duty to Mahone for  
22 failing to adequately train and supervise Defendant Thaut in not denying prisoners medial complaints  
23 and medical emergencies." Dkt. 114, at 4. As a result, Plaintiff argues that these Defendants should  
24 not have been dismissed. *Id.*

25 Although this Court did not directly address this issue, Defendants, in their Motion for  
26 Summary Judgment, (which was the basis for the Report and Recommendation) pointed out that  
27 Defendants in a 42 U.S.C. § 1983 action cannot be held liable based on a theory of respondeat  
28 superior or vicarious liability citing *Polk County v. Dodson*, 454 U.S. 312, 325 (1981); *Bergquist v.*  
*County of Cochise*, 806 F.2d 1364, 1369 (9th Cir. 1986). Dkt. 56, at 16.

1 A supervisor may be liable if there exists *either* (1) his or her personal involvement in  
2 the constitutional deprivation, *or* (2) a sufficient causal connection between the  
3 supervisor's wrongful conduct and the constitutional violation. Supervisory liability  
4 exists even without overt personal participation in the offensive act if supervisory  
5 officials implement a policy so deficient that the policy itself is a repudiation of  
6 constitutional rights and is the moving force of the constitutional violation.

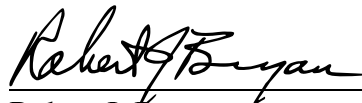
7 *Redman v. County of San Diego*, 942 F.2d 1435, 1446-7 (9th Cir. 1991)(citations omitted). Plaintiff  
8 failed to show, in any of his pleadings or later in this Motion for Reconsideration, any basis for  
9 liability for any of these Defendants. Moreover, Plaintiff has failed to show a manifest error in the  
10 prior ruling or new facts or legal authority which could not have been brought to the Court's  
11 attention earlier with reasonable diligence under Federal Local Rule 7(h). Plaintiff's motion for  
12 reconsideration on the dismissal of these Defendants should be denied.

### 13 **III. ORDER**

14 Therefore, it is hereby **ORDERED** that:

15 Plaintiff's Motion for Reconsideration (Dkt. 114) is **DENIED**. The Clerk is directed to send  
16 copies of this Order to plaintiff, counsel defendants who have appeared, and to the Hon. J. Kelley  
17 Arnold.

18 DATED this 13<sup>th</sup> day of September, 2005.

19   
20 Robert J. Bryan  
21 United States District Judge  
22  
23  
24  
25  
26  
27  
28